

IN THE HIGH COURT OF HIMACHAL PRADESH,  
SHIMLA.

**Regular Second Appeal No. 278 of 1998.**

*Judgment reserved on: 16.11.2007.*

**Date of Decision: December, 2007.**

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***State of H.P.***

***..... Appellant***

***Versus***

***Dhani Ram & ors***

***..... Respondents.***

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Coram

***The Hon'ble Mr. Justice Dev Darshan Sud, Judge.***

Whether approved for reporting?<sup>1</sup>

For the Petitioner: Mr. Rajan Dewan, Additional Advocate General.

For the Respondents: Ms. Jyotsna Rewal Dua, Advocate.

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***Dev Darshan Sud, Judge.***

This appeal has been preferred by the State of Himachal Pradesh against the judgment and decree passed by the learned Additional District Judge, Sirmour, reversing the judgment and decree of the Sub Judge Ist Class Court No. 2 Paonta Sahib, dismissing the suit of the respondents for declaration that the revenue entries with respect to khasra No. 152 measuring 9 bighas 4 biswas are wrong, fraudulent and contrary to the factual position as the plaintiff has become the owner of this land along with khasra Nos. 150 and 155 by operation of law. Sh. Bihari, the predecessor-

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<sup>1</sup> Whether Reporters of Local Papers may be allowed to see the judgment?

in-interest of the plaintiff/respondents instituted suit out of which this appeal arises alleging that the defendants who are the owners of khasra Nos. 150, 152 and 155, had inducted Syndicate Land Produce Company as non occupancy tenant, who further inducted him as a tenant on payment of 1/4<sup>th</sup> batai, as rent. It was pleaded that since he was in continuous possession of the land as a non occupancy tenant, he had become its owner in accordance with the provisions of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 (hereinafter referred to as the Act). The case of the plaintiff was that the revenue record showing the State to be the owner in possession of the land is incorrect.

The suit was contested on a number of grounds. The learned trial court held as a fact that the Syndicate Land Produce Company was a non occupancy tenant of the State of Himachal Pradesh, the plaintiff is in possession of the suit land. The conclusion of the learned trial court on a conspectus of the entire evidence and the issues was:-

“10. Accordingly, issue No. 1, 5 and 6 are decided in favour of the plaintiff and defendant respectively. It is also clear that the Syndicate Land Produce Company has created tenancy in favour of the plaintiff, but the land was again taken back by this company in the year 1960-61. Therefore, issue No. 2 is decided only to the extent that in 1950's he was inducted as tenant by this company and thereafter the tenancy is no more in existence. Possession of the plaintiff is also proved on record. Therefore, Issue No. 3 is decided in favour of the plaintiff. The revenue entries in favour of the defendant till 1992 are correct and after that now the

plaintiff is in possession of the suit land. Therefore, Issue No. 4 is decided partly in favour of the plaintiff and partly against him.”

Being aggrieved by the judgment of the learned trial court, the plaintiff appealed to the court of District Judge who, vide impugned judgment, reversed the judgment and decree of the trial court and held that the plaintiff-respondent was a non occupancy tenant over the suit land and has become its owner with the coming into force of the Act, as aforesaid and that entries in the revenue record showing the defendants to be the owners are incorrect.

The State being aggrieved by this decision has appealed to this Court. The appeal was admitted on 27.7.1998 and by an order of this court on 19.6.2007, three questions formulated with the appeal were ordered to be considered at the time of final hearing.

Question No. 2 as raised in the grounds of appeal, namely; *Whether the proprietary rights in respect of government land cannot be granted?* may be considered first as being of primary importance. There is no dispute that the land is that of the State Government. The Learned District Judge was in clear error in granting a decree of declaration holding the plaintiff-respondent to be its owner by virtue of the provisions of Section 104 of the Act. By a judgment dated 16.5.2007 in RSA No. 34 of 1995, titled **State of H.P. vs. Chander Dev and others** this court was called upon to answer the question as to whether the proviso to sub Section 9 of Section 104 of the Act which provides that no ownership of land belonging to the State can be granted to any person whatsoever, by

Amendment Act 6 of 1998, is retrospective or not. This amendment was passed by the Himachal Pradesh Legislature on 25.3.1988 and was published in the Himachal Pradesh Rajpatra (extraordinary) on 14.4.1998. Sub section (3) of Section 1 of the amendment Act reads:-

“(3) It shall be deemed to have come into force from the date of commencement of the Himachal Pradesh Tenancy and Land Reforms Act, 1972, but Section 3 and Section 4, in so far as it amends clause (g) and the second proviso to clause (i) of sub-section (2), sub-section (3) and sub section (4) of section 118 of the said Act, shall come into force at once.”

Proviso to sub-section (9) which is material for consideration in this appeal reads:-

“Provided that nothing contained in this section shall apply to such land which is either owned by or is vested in the Government under any law, whether before or after the commencement of this Act, and is leased out to any person.”

The court considered the judgment passed by this court (Devinder Gupta, J) in **Devi Chand vs. State 1994 (4) SLJ 2926** holding that the amendment is retrospective and that the proviso which was added to the Act would be deemed to have always existed and inforce as part of Section 104 of the Act. Another judgment of (Kamlesh Sharma,J) in **Dinesh Kumar vs. State of H.P. and others 1994 (supplement) SLC, 385** holding that though the amendment was retrospective yet, it did not take away the rights of those tenants who had been conferred proprietary rights and

mutations evidencing this fact had been attested in their favour was held to be per incuriam. It was this conflict between the decisions noted herein before which was the subject matter of the decision in the appeal in **Chander Dev's case** (supra). The Division Bench after noticing the entire case law, held:-

“..... We are of the view that the latter judgment delivered by Justice Kamlesh Sharma must be held to be per incuriam in view of the fact that it did not notice the earlier judgment delivered by Justice Devinder Gupta.....

Therefore, we have no other option, but to hold that the proviso added at the end of Section 9 of Section 104 of the Act by amendment Act No. 6 of 1998 is retrospective in nature and it also takes away the rights of the persons which rights may have vested in them automatically under the provisions of the unamended Act.”

In view of the law laid down by this Court, the judgment passed by the District Judge cannot be sustained. This question is therefore, answered in favour of the State and against the respondents and the judgment and decree of the District Judge is quashed and set aside. No decree for declaration holding the plaintiff-respondents to be the owner of the suit land could have been passed on the claim that he had acquired proprietary rights under the Act.

On the other two questions viz; the question of jurisdiction, it was the provisions of the Act which are to be interpreted and which is the sole jurisdiction of a Civil Court, it cannot be contended that the Civil Court has no jurisdiction.

On the other question as to whether on the question of misreading of documentary evidence on the record, I do not find any ground to interfere by undertaking an exercise of reappreciating the evidence which is impermissible under Section 100 of the Code of Civil Procedure.

This appeal is accordingly allowed. The judgment and decree of the District Judge in appeal is quashed and set aside to the extent it grants a declaration to the plaintiff-respondents that he is the owner of the land and the revenue entries showing the State is the owner of this land is incorrect. There shall be no order as to costs.

**December, 2007.**  
(cm)

**(Dev Darshan Sud),**  
**Judge.**